

ABSTRAK

Divestasi merupakan istilah yang dikenal dalam dunia investasi. Divestasi sendiri di Indonesia mulai dikenal dalam Kontrak Karya antara Pemerintah Indonesia dengan Penanam Modal Asing di bidang pertambangan mineral dan batu bara. Istilah divestasi menjadi ramai dibicarakan saat Pemerintah Indonesia membuat sebuah kebijakan yang dituliskan di dalam Undang Undang Nomor 4 Tahun 2009 Tentang Mineral dan Batu Bara. Divestasi di Indonesia menimbulkan banyak permasalahan, hal tersebut dapat dilihat dari tidak berjalannya kewajiban divestasi oleh para penanam modal asing di bidang pertambangan mineral dan batu bara. Permasalahan tersebut dirasa timbul karena karakteristik divestasi yang mirip dengan karakteristik dari ekspropriasi tidak langsung. Dimana ekspropriasi tidak langsung merupakan hal yang dilarang dalam dunia investasi internasional. Sengketa yang timbul dari permasalahan divestasi dapat diselesaikan melalui arbitrase internasional menurut UU Nomor 25 Tahun 2007 tentang Penanaman Modal, sementara menurut UU Nomor 4 tahun 2009 tentang Mineral dan Batu Bara penyelesaian sengketa yang berkaitan dengan izin dapat diselesaikan di arbitrase dan pengadilan nasional.

Kata Kunci : Divestasi, Ekspropriasi, Mineral dan Batu Bara

ABSTRACT

Divestment is a term which known in investment. Divestment in Indonesia has known since contract of work has been exist between Indonesia Government and Foreign Investor on coal and mining. Indonesian government made a policy about divestment which written on Law of Coal and Mining Number 4, 2009.

Divestment caused some issue which is we could see it from some foreign investor on coal and mining has not done their obligation to divest their share. That issue caused by the characteristic of divestment that look pretty similar to the characteristic of indirect expropriation which is prohibited in international investment. The dispute that caused by the obligation of divestment could be solved in international arbitration which is stated on Law of Investment number 25, 2007. Meanwhile based on Law of Coal and Mining Number 4, 2009, the disputes that caused by the license of the production on coal and mining must be solved only in Indonesian court and arbitration.

Keyword : Divestment, Expropriation, Coal and Mining